

## WASTE ISOLATION PILOT PLANT LAND WITHDRAWAL AMENDMENT ACT

APRIL 25, 1996.—Ordered to be printed

Mr. BLILEY, from the Committee on Commerce,  
submitted the following

### R E P O R T

[To accompany H.R. 1663]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 1663) to amend the Waste Isolation Pilot Plant Land Withdrawal Act, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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#### AMENDMENT

The amendment is as follows:  
Strike out all after the enacting clause and insert in lieu thereof the following:

**SECTION 1. SHORT TITLE AND REFERENCE.**

(a) **SHORT TITLE.**—This Act may be cited as the “Waste Isolation Pilot Plant Land Withdrawal Amendment Act”.

(b) **REFERENCE.**—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Waste Isolation Pilot Plant Land Withdrawal Act (Public Law 102–579).

**SEC. 2. DEFINITIONS.**

Paragraphs (18) and (19) of section 2 are repealed.

**SEC. 3. TEST PHASE AND RETRIEVAL PLANS.**

Section 5 and the item relating to such section in the table of contents are repealed.

**SEC. 4. MANAGEMENT PLAN.**

Section 4(b)(5)(B) is amended by striking “or with the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.)”.

**SEC. 5. TEST PHASE ACTIVITIES.**

Section 6 is amended—

- (1) by repealing subsections (a) and (b),
- (2) by repealing paragraph (1) of subsection (c),
- (3) by redesignating subsection (c) as subsection (a) and in that subsection—
  - (A) by repealing subparagraph (A) of paragraph (2),
  - (B) by striking the subsection heading and the matter immediately following the subsection heading and inserting “STUDY.—The following study shall be conducted.”,
  - (C) by striking “(2) REMOTE-HANDLED WASTE.—”,
  - (D) by striking “(B) STUDY.—”,
  - (E) by redesignating clauses (i), (ii), and (iii) as paragraphs (1), (2), and (3), respectively, and
  - (F) by realigning the margins of such clauses to be margins of paragraphs,
- (5) in subsection (d), by striking “, during the test phase, a biennial” and inserting “a” and by striking “, consisting of a documented analysis of” and inserting “as necessary to demonstrate”, and
- (6) by redesignating subsection (d) as subsection (b).

**SEC. 6. DISPOSAL OPERATIONS.**

Section 7(b) is amended to read as follows:

“(b) **REQUIREMENTS FOR COMMENCEMENT OF DISPOSAL OPERATIONS.**—The Secretary may commence emplacement of transuranic waste underground for disposal at WIPP only upon completion of—

- “(1) the Administrator’s certification under section 8(d)(1) that the WIPP facility will comply with disposal regulations; and
- “(2) the acquisition by the Secretary (whether by purchase, condemnation, or otherwise) of Federal Oil and Gas Leases No. NMNM 02953 and No. NMNM 02953C, unless the Administrator determines, under section 4(b)(5), that such acquisition is not required.”.

**SEC. 7. ENVIRONMENTAL PROTECTION AGENCY DISPOSAL REGULATIONS.**

(a) **SECTION 8(d)(1).**—Section 8(d)(1) is amended—

- (1) by amending subparagraph (A) to read as follows:

“(A) **APPLICATION FOR COMPLIANCE.**—Within 30 days after the date of the enactment of the Waste Isolation Pilot Plant Land Withdrawal Amendment Act, the Secretary shall provide to Congress a schedule for the incremental submission of chapters of the application to the Administrator beginning no later than 30 days after such date. The Administrator shall review the submitted chapters and provide requests for additional information from the Secretary as needed for completeness within 45 days of the receipt of each chapter. The Administrator shall notify Congress of such requests. The schedule shall call for the Secretary to submit all chapters to the Administrator no later than October 31, 1996.”; and

- (2) in subparagraph (D), by striking “after the application is” and inserting “after the full application has been”.

(b) **SECTION 8(d) (2), (3).**—Section 8(d) is amended by striking paragraphs (2) and (3), by striking “(1) COMPLIANCE WITH DISPOSAL REGULATIONS.—”, and by redesignating

nating subparagraphs (A), (B), (C), and (D) of paragraph (1) as paragraph (1), (2), (3), and (4), respectively.

(c) SECTION 8(g).—Section 8(g) is amended to read as follows:

“(g) ENGINEERED AND NATURAL BARRIERS, ETC.—The Secretary shall use both engineered and natural barriers and any other measures to the extent necessary at WIPP to comply with final disposal regulations.”.

**SEC. 8. COMPLIANCE WITH ENVIRONMENTAL LAWS AND REGULATIONS.**

(a) SECTION 9(a)(1).—Section 9(a)(1) is amended by adding after and below subparagraph (H) the following: “With respect to transuranic mixed waste designated by the Secretary for disposal at WIPP, such waste is exempt from the land disposal restrictions published at part 268 of 40 C.F.R. because compliance with the environmental radiation protection standards published at part 191 of 40 C.F.R. renders compliance with the land disposal restrictions unnecessary to achieve desired environmental protection and a no migration variance is not required for disposal of transuranic mixed waste at WIPP.”.

(b) SECTION 9(b).—Subsection (b) of section 9 is repealed.

(c) SECTION 9(c).—Subsection (c) of section 9 is repealed.

(d) SECTION 14.—Section 14 is amended—

(1) in subsection (a), by striking “No provision” and inserting “Except for the exemption from the land disposal restrictions described in section 9(a)(1), no provision”; and

(2) in subsection (b)(2), by striking “including all terms and conditions of the No-Migration Determination” and inserting “except that the transuranic mixed waste designated by the Secretary for disposal at WIPP is exempt from the land disposal restrictions described in section 9(a)(1)”.

**SEC. 9. RETRIEVABILITY.**

(a) SECTION 10.—Section 10 is amended to read as follows:

**“SEC. 10. TRANSURANIC WASTE.**

“It is the intent of Congress that a decision will be made by the Secretary with respect to the disposal of transuranic waste no later than November 30, 1997.”.

(b) CONFORMING AMENDMENT.—The item relating to section 10 in the table of contents is amended to read as follows:

“Sec. 10. Transuranic waste.”.

**SEC. 10. DECOMMISSIONING OF WIPP.**

Section 13 is amended—

(1) by repealing subsection (a), and

(2) in subsection (b), by striking “(b) MANAGEMENT PLAN FOR THE WITHDRAWAL AFTER DECOMMISSIONING.—Within 5 years after the date of the enactment of this Act, the” and inserting “The”.

**SEC. 11. ECONOMIC ASSISTANCE AND MISCELLANEOUS PAYMENTS.**

Section 15(a) is amended—

(1) by striking “to the Secretary for payments to the State \$20,000,000 for each of the 15 fiscal years beginning with the fiscal year in which the transport of transuranic waste to WIPP is initiated” and inserting “to the State \$20,000,000 for each of the 15 fiscal years beginning with the date of the enactment of the Waste Isolation Pilot Plant Land Withdrawal Amendment Act”, and

(2) by adding at the end the following: “An appropriation to the State shall be in addition to any appropriation for WIPP.”.

**SEC. 12. NON-DEFENSE WASTE.**

Section 7(a) is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following:

“(3) NON-DEFENSE WASTE.—Within the limits prescribed in paragraphs (1) and (2) and within the capacity prescribed by paragraph (4), WIPP may receive transuranic waste from the Secretary which did not result from a defense activity.”.

**PURPOSE AND SUMMARY**

The purpose of H.R. 1663, the Waste Isolation Pilot Plant Land Withdrawal Amendment Act, is to eliminate outdated statutory requirements for, and expedite the commencement of, operations at the Waste Isolation Pilot Plant (WIPP). The WIPP is the nation’s

first repository for the permanent disposal of transuranic materials.

## BACKGROUND AND NEED FOR LEGISLATION

### *I. Transuranic Waste*

Transuranic (TRU) elements—those with a periodic table value greater than uranium—are generally man-made products synthesized in laboratory conditions. The primary use of TRU materials in the U.S. is for the defense nuclear weapons program. Most TRU waste consists of “trash,” such as protective clothing, lab instruments, and equipment which has been contaminated by TRU isotopes. TRU waste is differentiated from other radioactive materials by the presence of TRU particles, which have gross radiation levels that are much lower than high-level wastes. The greatest danger from TRU waste is not from its effects on the body or from ingestion, but from inhalation of particles or entry into the bloodstream.

As a result, over 97 percent of TRU waste can be safely handled if shielded in an appropriate waste container, generally a 55-gallon steel drum or other steel container. The remaining three percent of TRU wastes must be handled remotely, due primarily to the presence of non-TRU radioactive materials which contain beta and gamma radiation which can penetrate standard steel containers and require additional shielding for transportation and storage. TRU wastes are currently stored on-site at generating facilities, with a vast majority of these wastes being located at 10 different Department of Energy sites. Until 1970, TRU waste was disposed of in a manner similar to that used for low-level radioactive wastes, usually by burial in shallow earth trenches.

### *II. The Waste Isolation Pilot Plant*

In 1970, the Atomic Energy Commission (forerunner of the Department of Energy) determined that TRU wastes should be handled in a more comprehensive fashion, and began siting studies which resulted in the decision to construct a facility about 26 miles east of Carlsbad, New Mexico. Congress authorized the construction of the WIPP in 1979 as part of the Department of Energy National Security and Military Application of Nuclear Energy Authorization Act (P.L. 96–164). Construction of the facility, located in a salt formation about 2,100 feet below the earth’s surface, began shortly thereafter. In 1992, Congress passed the Waste Isolation Pilot Plant Land Withdrawal Act (P.L. 102–579) to transfer ownership of the land surrounding WIPP to the Department of Energy (DOE), and authorized the Department to begin underground experiments using TRU waste.

In October of 1993, DOE announced that it would forego on-site testing of waste at WIPP in favor of laboratory testing at the Sandia National Laboratories to determine the site’s suitability for disposing of TRU waste. This testing was accomplished through a “performance assessment” of the WIPP, which utilizes a combination of non-waste tests at the site and laboratory mathematical models, and accurately predicts the behavior of wastes to be stored at WIPP. The Environmental Protection Agency (EPA) and the Na-

tional Academy of Sciences supported DOE's decision to switch from on-site testing to laboratory testing. Additionally, a December 1994 report by the U.S. General Accounting Office, entitled "Nuclear Waste: Change in Test Strategy Sound, but DOE Overstated Savings," concluded that the DOE testing strategy, in lieu of on-site testing, would accurately predict waste behaviors at WIPP and would conclusively determine WIPP site suitability.

### *III. Steps to Progress*

Operation of WIPP is a crucial step to the environmental remediation of TRU waste at facilities throughout the DOE weapons complex. The primary waste sites, along with current estimates of TRU wastes contained at each site, are listed below:

	<i>Waste Volume (cubic feet)</i>
DOE Generator Site:	
Hanford Site, WA .....	2,693,000
Idaho National Engineering Laboratory, ID .....	1,232,000
Savannah River Plant, SC .....	1,037,000
Los Alamos National Laboratory, NM .....	661,000
Rocky Flats Site, CO .....	248,000
Oak Ridge National Laboratory, TN .....	84,000
Lawrence Livermore National Laboratory, CA .....	32,000
Nevada Test Site, NV .....	22,000
Mound Laboratory, OH .....	9,000
Argonne National Laboratory, IL .....	1,000

As WIPP is to serve as the permanent repository for the TRU wastes at these sites and nine other sites with lesser waste volumes, the environmental remediation of these sites is dependent upon the opening of WIPP. Delays in opening the WIPP facility have contributed to a lack of movement on cleanup at these sites.

Construction of WIPP was completed in 1991. Opening the facility has been delayed since that time by several factors, including certification of compliance with applicable environmental regulations by the U.S. Environmental Protection Agency. One issue of contention has been the applicability of regulations under the Solid Waste Disposal Act (42 USC 6901-6991i) at WIPP. Currently, it is anticipated that WIPP will be subject to four major regulatory schemes: (1) 40 CFR Part 191: Environmental Radiation Protection Standards for Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes; (2) 40 CFR Part 194: Criteria for the Certification and Determination of the Waste Isolation Pilot Plant's Compliance with Environmental Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes; (3) 40 CFR Part 264: Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities; and (4) 40 CFR Part 268: Land Disposal Restrictions. According to the Department of Energy's own estimates, complying with the overlapping requirements of 40 CFR Part 268: Land Disposal Restrictions could add up to an additional \$500 million in operating costs at WIPP over the life of the facility.

The December 1994 GAO report questioned DOE's assertion that it could open the facility by its announced January 1998 deadline, determining that a January 2000 opening was more likely. Since the release of the GAO report, DOE has revised its schedule for

opening WIPP, anticipating a June 1998 opening for contact-handled waste, and a post-2000 date for remotely-handled TRU waste operation. With broad agreement that in-situ testing will not be necessary to make a site suitability determination, it is important to remove statutory hurdles related to in-situ testing.

#### HEARINGS

The Subcommittee on Energy and Power held a hearing on July 21, 1995, to examine possible revisions to the Waste Isolation Pilot Plant Land Withdrawal Act proposed by Representative Skeen in H.R. 1663. Witnesses at the hearing included Representative Joe Skeen; Mr. George Dials, Manager, Carlsbad Area Office, U.S. Department of Energy; Ms. Ramona Trovato, Director, Office of Radiation and Indoor Air, U.S. Environmental Protection Agency; Ms. Bernice Steinhardt, Associate Director, Energy and Science Issues, U.S. General Accounting Office; Ms. Jennifer Salisbury, Secretary of Energy, Minerals and Natural Resources, State of New Mexico; Mr. Lindsay Lovejoy, Attorney, Office of the Attorney General, State of New Mexico; The Honorable Gary Perkowski, Mayor, City of Carlsbad; Mr. Don Hancock, Director, Nuclear Waste Safety Project, Southwest Research and Information Center; and Mr. Stephen P. Winston, Vice President for Technical Integration and Mission Development, Lockheed Martin.

#### COMMITTEE CONSIDERATION

On July 28, 1995, the Subcommittee on Energy and Power met in open markup session to consider H.R. 1663, the Waste Isolation Pilot Plant Land Withdrawal Amendment Act. The Subcommittee approved H.R. 1663 for Full Committee consideration, without amendment, by a voice vote, a quorum being present.

On March 13, 1996, the Committee met in open markup session and ordered H.R. 1663 reported to the House, as amended, by a voice vote, a quorum being present.

#### ROLLCALL VOTES

Clause 2(1)(2)(B) of rule XI of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. There were no recorded votes taken in connection with ordering H.R. 1663 reported or in adopting the amendments. The voice votes taken in Committee are as follows:

#### COMMITTEE ON COMMERCE—104TH CONGRESS VOICE VOTES (MARCH 13, 1996)

Bill: H.R. 1663, Waste Isolation Pilot Plant Land Withdrawal Amendment Act

Amendment: Amendment in the Nature of a Substitute by Mr. Schaefer

Disposition: Agreed to, without amendment, by a voice vote

Amendment: Amendment to the Schaefer Amendment in the Nature of a Substitute by Mr. Richardson re: provides that the Resource Conservation and Recovery Act applies fully to WIPP unless

EPA finds through a public rulemaking that the no-migration rules are not necessary to protect human health and the environment.

Disposition: Not agreed to, by a voice vote

Motion: Motion by Mr. Bliley to order H.R. 1663, as amended, reported to the House

Disposition: Agreed to, by a voice vote.

#### COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee held a legislative hearing and made findings that are reflected in this report.

#### COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Pursuant to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform and Oversight.

#### NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee states that H.R. 1663 would result in no new or increased budget authority or tax expenditures or revenues.

#### COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974.

#### CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, April 4, 1996.*

Hon. THOMAS J. BLILEY, Jr.  
*Chairman, Committee on Commerce,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1663, the Waste Isolation Pilot Plant Land Withdrawal Amendment Act, as ordered reported by the House Committee on Commerce on March 13, 1996.

The bill would not affect direct spending or receipts and thus would not be subject to pay-as-you-go procedures under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM,  
(For June E. O'Neill, Director).

#### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 1663.
2. Bill title: Waste Isolation Pilot Plant Land Withdrawal Amendment Act.
3. Bill status: As ordered reported by the House Committee on Commerce on March 13, 1996.
4. Bill purpose: The bill would amend portions of the Waste Isolation Pilot Plant (WIPP) Land Withdrawal Act. Specifically, H.R. 1663 would: expedite the disposal phase of the transuranic (TRU) waste, direct the Secretary of Energy to decide by November 30, 1997, whether to use the WIPP facility, exempt WIPP from certain laws and regulations governing land disposal, eliminate both the need for a decommissioning plan and a time limit for completing a plan for land management once decommissioning of WIPP is complete, and require less frequent reports.
5. Estimated cost to the Federal Government: Assuming appropriation of the entire amounts authorized, H.R. 1663 would increase discretionary spending by about \$30 million in 1997 and reduce spending by \$15 million in 1998 and about \$4 million a year thereafter. The budgetary effects of the legislation are summarized below:

[By fiscal year, in millions of dollars]

	1996	1997	1998	1999	2000	2001
SPENDING SUBJECT TO APPROPRIATIONS ACTION						
Spending under current law:						
Budget Authority/Authorizations <sup>1</sup> .....	345	355	366	377	388	400
Estimated Outlays .....	340	350	361	372	383	394
Proposed changes:						
Estimated Authorization Level .....	0	30	-15	-4	-4	-4
Estimated Outlays .....	0	18	-1	-5	-5	-4
Spending under the bill:						
Estimated Authorization Level <sup>1</sup> .....	345	385	351	373	384	396
Estimated Outlays .....	340	368	362	367	378	390

<sup>1</sup> The 1996 figure is the amount already appropriated.

6. Basis of estimate: CBO estimates that enactment of H.R. 1663 would cost \$30 million in budget authority in 1997 and would save \$27 million over the 1998–2001 period. The estimate assumes that, if the bill is enacted, the WIPP facility would begin receiving waste early in fiscal year 1998—a speed-up of about six months. Opening the WIPP facility earlier would increase costs, while exempting DOE from several regulations and modifying certain reporting requirements would contribute the estimated savings. The estimate assumes enactment of the bill by October 1, 1996, and appropriation of the authorized amounts for each fiscal year. CBO used historical spending rates for estimating outlays.



In 1997, DOE would need \$30 million for paying economic assistance to the State of New Mexico, for complying with current regulatory laws, and for preparing the site for earlier use. The bill would authorize appropriations for the economic assistance to be effective on the date of enactment of the bill in contrast to current law, which authorizes appropriations beginning in the fiscal year of the first shipment of transuranic waste to the WIPP site. The amount of the authorization—15 annual payments of \$20 million, adjusted for inflation—would remain the same. This payment would replace the one planned for the year 2013. According to DOE, an additional \$10 million would be needed in 1997 instead of 1998 to comply with certain reporting and other legal requirements and to prepare the site for use six months earlier than planned.

In 1998, the bill would save about \$15 million because: DOE would need about \$3 million more to operate WIPP six months earlier. DOE would bear \$10 million of costs in 1997 instead of 1998. The bill would exempt WIPP from certain regulations (40 CFR Part 191) governing waste disposal on land. According to DOE, this exemption would lead to savings in 1998 of at least \$5 million, with additional savings possible depending on conditions the Environmental Protection Agency (EPA) would impose under current law. DOE would have the option of using engineered or natural barriers to isolate the TRU waste instead of using both as required by current law. According to DOE, this change would save at least \$3 million annually over the 1998–2001 period.

After 1998, the bill would save approximately \$4 million annually because of lower cost barriers and reduced reporting requirements.

After 2001, some federal facilities for storing waste could cease operations up to one year earlier than planned because the WIPP facility would open earlier.

7. Estimated impacts on State, local, and tribal governments: The bill does not contain intergovernmental mandates as defined by Public Law 104–4, and would not impose direct costs on state, local, or tribal governments. The bill would change current law regarding the authorization of appropriations for economic assistance for the state of New Mexico. This change would allow New Mexico to begin receiving assistance in fiscal year 1997 rather than fiscal year 1998.

Current law authorizes appropriations for fifteen annual payments \$20 million (adjusted for inflation) to New Mexico beginning in the fiscal year of the first shipment of transuranic waste to the WIPP site. DOE estimates that under current law, the first waste shipment would occur in fiscal year 1998. The bill would change the date at which the authorization of appropriations becomes effective to the date of enactment of the bill, which CBO assumes would occur in fiscal year 1997.

8. Estimated impact on the private sector: CBO estimates that this bill would impose no new private sector mandates as defined by Public Law 104–4.

9. Previous CBO estimate: None.

10. Estimate prepared by: Elizabeth Chambers prepared the estimate of costs to the federal government. The impacts on state,

local, and tribal governments were estimated by Pepper Santalucia. Jean Wooster prepared the estimated impact on the private sector.

11. Estimate approved by: Paul Van de Water, Assistant Director for Budget Analysis.

#### INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that the bill would have no inflationary impact.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act are created by this legislation.

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

##### *Section 1. Short Title and Reference.*

The section states that the short title of this Act shall be the “Waste Isolation Pilot Plant Land Withdrawal Amendment Act” and provides that references in this Act, unless specified, are references to the Waste Isolation Pilot Plant Land Withdrawal Act (P.L. 102–579).

##### *Section 2. Definitions.*

The section deletes definitions for “test phase” and “test phase activities”. With the repeal of test phase requirements currently in statute, no need for these definitions exists.

##### *Section 3. Test Phase and Retrieval Plans.*

Section 3 repeals Section 5 of P.L. 102–579, pertaining to test phase and retrieval plans. With the decision to forego in-situ testing, the section is no longer needed.

##### *Section 4. Management Plan.*

This section makes a conforming change to ensure that the determination of the Administrator of the Environmental Protection Agency (Administrator) regarding the purchase of existing oil and gas leases is not affected by considerations under the Solid Waste Disposal Act (42 USC 6901 et seq.). The Administrator’s determination on such leases is still governed by the WIPP compliance criteria, established at 40 CFR 194.

##### *Section 5. Test Phase Activities.*

Section 6 of P.L. 102–579, which relates to requirements for the commencement of test phase activities, is amended by this section. Statutory provisions related to the on-site testing of WIPP materials are deleted. The bill retains provisions requiring studies of the impact remote-handled waste will have on WIPP and an analysis of the long-term performance of the facility. These studies will be useful in assessing the safety and performance of WIPP.

*Section 6. Disposal Operations.*

The section amends Section 7(b) of P.L. 102–579, which requires completion of certain activities prior to the emplacement of waste at WIPP, including planning requirements for the decommissioning of the facility and reports for a timetable and comprehensive listing of the waste to be disposed of at WIPP. These planning and reporting requirements are not necessary to initiate the commencement of disposal operations at WIPP. The section retains two current requirements: first, the certification by the EPA that the facility will comply with the disposal regulations; and second, the acquisition of oil and gas leases unless the Administrator determines that such purchase is not necessary.

*Section 7. Environmental Protection Agency Disposal Regulations.*

This section revises the process for EPA certification of the WIPP facility. It authorizes the use of a phased approach to DOE's submittal of the application for a certification of compliance. As DOE completes separate chapters of the application, it will submit the chapters to EPA, allowing for a more expedited handling of the application by the Administrator. The section also modifies the requirement of the Secretary of Energy (Secretary) to utilize engineered and natural barriers to the extent necessary to comply with the final disposal regulations.

*Section 8. Compliance with Environmental Laws and Regulations.*

The applicability of environmental statutes is amended to eliminate Solid Waste Disposal Act "no migration" requirements (40 CFR Part 268). WIPP remains under the regulatory structure of 40 CFR Parts 191, 194 and 264. In meetings with DOE and EPA, both principal agencies indicated support for the elimination of the 40 CFR Part 268 restrictions, citing that their application would not be necessary to adequately protect human health and the environment. Removing this unnecessary and duplicative regulatory burden will have a beneficial effect on opening WIPP and in ensuring a responsible use of taxpayer funding during WIPP's operation.

*Section 9. Retrievability.*

This section eliminates test phase retrievability requirements and replaces them with a new section requiring the Secretary to make a decision regarding use of the WIPP facility no later than November 30, 1997. Requirements relating to in-situ testing are obsolete with the Secretary's decision to utilize laboratory testing for a determination of site suitability.

*Section 10. Decommissioning of WIPP.*

This section modifies requirements for the Secretary to submit a plan for the decommissioning of WIPP. The current statute requires the submittal prior to the commencement of disposal operations; this section would retain this requirement for the Secretary to develop such a plan while eliminating the pre-commencement submittal requirement. While the decommissioning plan is an important component of long-term WIPP performance, it is not integral to the commencement of operations at the facility.

*Section 11. Economic Assistance and Miscellaneous Payments.*

The limitation on assistance to the State of New Mexico is eliminated, and replaced with the requirement that the benefits schedule established under the Act commence on the date of enactment of this Act. This will ensure that funding for needed infrastructure improvements in the State of New Mexico is made available in a timely manner.

*Section 12. Non-Defense Waste.*

This provision allows the Secretary to accept TRU waste from non-defense activities. Such waste comprises a very limited percentage of the total amount of TRU waste, and WIPP is the only facility presently capable of handling such material for permanent disposal.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

**WASTE ISOLATION PILOT PLANT LAND WITHDRAWAL ACT**

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “Waste Isolation Pilot Plant Land Withdrawal Act”.

(b) **TABLE OF CONTENTS.**—

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

Sec. 3. Land withdrawal and reservation for WIPP.

Sec. 4. Establishment of management responsibilities.

**[Sec. 5. Test phase and retrieval plans.]**

\* \* \* \* \*

**[Sec. 10. Retrievalability.]**

*Sec. 10. Transuranic waste.*

\* \* \* \* \*

**SEC. 2. DEFINITIONS.**

For purposes of this Act:

(1) \* \* \*

\* \* \* \* \*

**[(18) TEST PHASE.**—The term “test phase” means the period of time, during which test phase activities are conducted, beginning with the initial receipt of transuranic waste at WIPP and ending when the earliest of the following events occurs:

**[(A)** The requirements described in section 7(b) are met.

**[(B)** The Administrator determines under section 8(d)(1)(B) that the WIPP facility will not comply with the disposal regulations.

**[(C)** The time period described in paragraphs (2) and (3) of section 8(d) expires.

[(D) The Secretary is required by section 9(b)(2) to implement the retrieval plan.

[(19) TEST PHASE ACTIVITIES.—The term “test phase activities” means the testing and experimentation activities to determine the suitability of WIPP as a repository for the permanent isolation of transuranic waste.]

\* \* \* \* \*

#### SEC. 4. ESTABLISHMENT OF MANAGEMENT RESPONSIBILITIES.

(a) \* \* \*

(b) MANAGEMENT PLAN.—

(1) \* \* \*

\* \* \* \* \*

(5) MINING.—

(A) \* \* \*

(B) EXCEPTION.—Existing rights under Federal Oil and Gas Leases No. NMNM 02953 and No. NMNM 02953C shall not be affected unless the Administrator determines, after consultation with the Secretary and the Secretary of the Interior, that the acquisition of such leases by the Secretary is required to comply with the final disposal regulations [or with the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.)].

\* \* \* \* \*

#### [SEC. 5. TEST PHASE AND RETRIEVAL PLANS.

[(a) IN GENERAL.—Not later than 7 months after the date of the enactment of this Act, the Secretary shall prepare, and submit to the Administrator for review, a test phase plan and a retrieval plan in accordance with this section. The Secretary shall give notice in the Federal Register of submission of such plans and provide an opportunity for public access to such plans.

[(b) TEST PHASE PLAN.—The test phase plan and any modification of the plan, as appropriate, shall—

[(1) set forth the test phase activities to be conducted at WIPP;

[(2) specify the quantities and types of transuranic waste required for such activities;

[(3) provide a detailed description of how the test phase activities will provide information directly relevant to a certification of compliance with the final disposal regulations or to compliance with the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.); and

[(4) include justification for all such activities.

[(c) RETRIEVAL PLAN.—The retrieval plan and any modification of the plan, as appropriate, shall set forth a detailed plan for the removal of transuranic waste emplaced at WIPP during the test phase, if such removal is required under any provision of this Act.

[(d) APPROVAL BY ADMINISTRATOR.—

[(1) IN GENERAL.—The Administrator shall determine, in a single rulemaking procedure, whether to approve, in whole or in part, or disapprove the test phase plan and whether to approve or disapprove the retrieval plan. The Administrator shall, in accordance with paragraph (3), publish in the Federal

Register a final rule setting forth the approval or disapproval in accordance with this subsection not later than 10 months after the date of the enactment of this Act.

**[(2) STANDARDS FOR APPROVAL.—**

**[(A) TEST PHASE PLAN.—**The Administrator shall approve the test phase plan, or any modification to the plan, in whole or in part, if the Administrator determines that the experiments will provide data that are directly relevant to a certification of compliance with the final disposal regulations or to compliance with the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

**[(B) RETRIEVAL PLAN.—**The Administrator shall approve the retrieval plan, or any modification to the plan, if the Administrator determines that it will provide for satisfactory retrieval of all transuranic waste emplaced during the test phase from WIPP should retrieval of such waste be required.

**[(3) RULEMAKING PROCEDURE.—**The Administrator shall conduct the rulemaking required in paragraph (1) under section 553 of title 5, United States Code, except that sections 556 and 557 of such title shall not apply.

**[(4) CONSEQUENCES OF APPROVAL.—**If the Administrator approves the test phase plan, in whole or in part, and the retrieval plan under this subsection, the Secretary may immediately proceed with test phase activities to the extent they have been approved in the rule described in paragraph (3) and to the extent the requirements of section 6(b) have been met.

**[(e) RECONSIDERATION OF DISAPPROVED PLANS.—**If any plan, or portion of a plan, is not approved under subsection (d), the Secretary may submit a revised plan, or portion, to the Administrator. Such revised plan, or portion, shall be considered in accordance with the procedures applicable under such subsection, except that final action shall be completed within 3 months of submission to the Administrator.

**[(f) MODIFICATIONS TO TEST PHASE PLAN OR RETRIEVAL PLAN.—**The Secretary may submit modifications to the test phase plan or retrieval plan. Such modifications shall be considered in accordance with the procedures applicable under subsection (d), except that final action shall be completed within 3 months of submission to the Administrator.】

**SEC. 6. TEST PHASE ACTIVITIES.**

**[(a) GENERAL AUTHORITY.—**The Secretary is authorized, subject to subsections (b) and (c), to conduct test phase activities in accordance with the test phase plan.

**[(b) REQUIREMENTS FOR COMMENCEMENT OF TEST PHASE ACTIVITIES.—**The Secretary may not transport any transuranic waste to WIPP to conduct test phase activities under subsection (a) unless the following requirements are met:

**[(1) FINAL DISPOSAL REGULATIONS ISSUED.—**The final disposal regulations are issued and published in the Federal Register under section 8(b).

**[(2) TERMS OF NO-MIGRATION DETERMINATION COMPLIED WITH.—**The Administrator has determined that the Secretary has complied with the terms and conditions of the No-Migra-

tion Determination. The determination of the Administrator under this paragraph shall not be subject to rulemaking or judicial review.

[(3) TEST PHASE AND RETRIEVAL PLANS APPROVED.—The Secretary has issued, and the Administrator has approved, the test phase plan and the retrieval plan under section 5.

[(4) EMERGENCY RESPONSE TRAINING.—

[(A) REVIEW.—The Secretary of Labor, acting through the Occupational Safety and Health Administration, has reviewed the emergency response training programs of the Department of Energy that apply to WIPP.

[(B) CERTIFICATION.—The Secretary of Labor, acting through the Occupational Safety and Health Administration, has certified that the Department of Labor has reviewed emergency response training programs of the Department of Energy that apply to WIPP and has concurred that such programs are in compliance with part 1910.120 of title 29, Code of Federal Regulations. Such certification shall not be subject to rulemaking or judicial review.

[(5) CERTIFICATION OF SAFETY.—The Secretary has certified, through the issuance of safety analysis documents, that the safety of test phase activities to be completed at WIPP can be ensured through procedures that would not compromise the type, quantity, or quality of data collected from such test phase activities. Such certification shall not be subject to rulemaking or judicial review.

[(6) STABILITY OF ROOMS USED FOR TESTING.—The Secretary of Energy shall issue a plan to ensure that the mined rooms in the underground repository at WIPP in which transuranic waste may be emplaced will remain sufficiently stable and safe to permit uninterrupted testing for the duration of such activities. The Secretary of Labor, acting through the Mine Safety and Health Administration, shall review such plan and concur that the plan ensures that the mined rooms in the underground repository at WIPP in which transuranic waste may be emplaced will remain sufficiently stable and safe to permit uninterrupted testing for the duration of such activities. Such issuance and concurrence shall not be subject to rulemaking or judicial review.

[(c) LIMITATIONS.—Test phase activities conducted under subsection (a) shall be subject to the following limitations:

[(1) QUANTITY OF WASTE THAT MAY BE TRANSPORTED.—During the test phase, the Secretary may transport to WIPP—

[(A) only such quantities of transuranic waste as the Administrator has approved for test phase activities under section 5; and

[(B) in no event more than  $\frac{1}{2}$  of 1 percent of the total capacity of WIPP as described in section 7(a)(3).

[(2) REMOTE-HANDLED WASTE.—

[(A) TRANSPORTATION AND EMPLACEMENT.—The Secretary may not transport to or emplace remote-handled transuranic waste at WIPP during the test phase.

[(B) STUDY.—]

(a) *STUDY.*—The following study shall be conducted:

[(i)] (1) IN GENERAL.—Within 3 years after the date of the enactment of this Act, the Secretary shall complete a study on remote-handled transuranic waste in consultation with affected States, the Administrator, and after the solicitation of views of other interested parties.

[(ii)] (2) REQUIREMENTS OF STUDY.—Such study shall include an analysis of the impact of remote-handled transuranic waste on the performance assessment of WIPP and a comparison of remote-handled transuranic waste with contact-handled transuranic waste on such issues as gas generation, flammability, explosiveness, solubility, and brine and geochemical interactions.

[(iii)] (3) PUBLICATION.—The Secretary shall publish the findings of such study in the Federal Register.

[(d)] (b) PERFORMANCE ASSESSMENT REPORT.—

(1) IN GENERAL.—The Secretary shall publish[, during the test phase, a biennial] a performance assessment report[, consisting of a documented analysis of] *as necessary to demonstrate* the long-term performance of WIPP. Each such report shall be provided to the State, the Administrator, the National Academy of Sciences, and the EEG for their review and comment.

(2) RESPONSES BY SECRETARY TO COMMENTS.—If, within 120 days of the publication of a performance assessment report under paragraph (1), the State, the Administrator, the National Academy of Sciences, or the EEG provide written comments on the report, the Secretary shall submit written responses to the comments to the State, the Administrator, the National Academy of Sciences, and the EEG, and to other appropriate entities or persons after consultation with the State, within 120 days of receipt of the comments.

## SEC. 7. DISPOSAL OPERATIONS.

(a) TRANSURANIC WASTE LIMITATIONS.—

(1) \* \* \*

\* \* \* \* \*

(3) *NON-DEFENSE WASTE*.—*Within the limits prescribed in paragraphs (1) and (2) and within the capacity prescribed by paragraph (4), WIPP may receive transuranic waste from the Secretary which did not result from a defense activity.*

[(3)] (4) CAPACITY OF WIPP.—The total capacity of WIPP by volume is 6.2 million cubic feet of transuranic waste.

[(b)] REQUIREMENTS FOR COMMENCEMENT OF DISPOSAL OPERATIONS.—The Secretary may commence emplacement of transuranic waste underground for disposal at WIPP only upon completion of—

[(1)] the Administrator's certification under section 8(d)(1) that the WIPP facility will comply with the disposal regulations;

[(2)] the submission to the Congress by the Secretary of plans for decommissioning WIPP and post-decommissioning management of the Withdrawal under section 13;



[(3) the expiration of the 180-day period beginning on the date on which the Secretary notifies the Congress that the requirements of section 9(a)(1) have been met;

[(4) the acquisition by the Secretary (whether by purchase, condemnation, or otherwise) of Federal Oil and Gas Leases No. NMNM 02953 and No. NMNM 02953C, unless the Administrator determines, under section 4(b)(5), that such acquisition is not required;

[(5) the submittal to the Congress by the Secretary of comprehensive recommendations for the disposal of all transuranic waste under the control of the Secretary, including a timetable for the disposal of such waste; and

[(6) the completion by the Secretary, with notice and an opportunity for public comment, of a survey identifying all transuranic waste types at all sites from which wastes are to be shipped to WIPP, and—

[(A) the results of such survey shall be made available to the public and be provided to the Administrator; and

[(B) such survey shall not be subject to rulemaking or judicial review.]

(b) *REQUIREMENTS FOR COMMENCEMENT OF DISPOSAL OPERATIONS.*—*The Secretary may commence emplacement of transuranic waste underground for disposal at WIPP only upon completion of—*

*(1) the Administrator's certification under section 8(d)(1) that the WIPP facility will comply with disposal regulations; and*

*(2) the acquisition by the Secretary (whether by purchase, condemnation, or otherwise) of Federal Oil and Gas Leases No. NMNM 02953 and No. NMNM 02953C, unless the Administrator determines, under section 4(b)(5), that such acquisition is not required.*

#### **SEC. 8. ENVIRONMENTAL PROTECTION AGENCY DISPOSAL REGULATIONS.**

(a) \* \* \*

\* \* \* \* \*

(d) DISPOSAL REGULATIONS.—

[(1) COMPLIANCE WITH DISPOSAL REGULATIONS.—]

[(A) IN GENERAL.—The Secretary shall comply at WIPP with the final disposal regulations. Within 7 years of the date of the first receipt of transuranic waste at WIPP, the Secretary shall submit to the Administrator an application for certification of compliance with such regulations.]

*(1) APPLICATION FOR COMPLIANCE.—Within 30 days after the date of the enactment of the Waste Isolation Pilot Plant Land Withdrawal Amendment Act, the Secretary shall provide to Congress a schedule for the incremental submission of chapters of the application to the Administrator beginning no later than 30 days after such date. The Administrator shall review the submitted chapters and provide requests for additional information from the Secretary as needed for completeness within 45 days of the receipt of each chapter. The Administrator shall notify Congress of such requests. The schedule shall call for the Secretary to*

*submit all chapters to the Administrator no later than October 31, 1996.*

[(B)] (2) CERTIFICATION BY ADMINISTRATOR.—Within 1 year of receipt of the application under subparagraph (A), the Administrator shall certify, by rule pursuant to section 553 of title 5, United States Code, whether the WIPP facility will comply with the final disposal regulations, and sections 556 and 557 of such title shall not apply.

[(C)] (3) JUDICIAL REVIEW.—Judicial review of the certification of the Administrator under subparagraph (B) shall not be restricted by the provisions of section 221 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2271(c)).

[(D)] (4) LIMITATION.—Any certification of the Administrator under subparagraph (B) may only be made [after the application is] *after the full application has been submitted to the Administrator under subparagraph (A).*

[(2) FAILURE TO CERTIFY.—Except as provided in paragraph (3), if, upon the expiration of the 10-year period beginning on the date of the first receipt of transuranic waste at WIPP, the Administrator has not certified that the WIPP facility will comply with the final disposal regulations—

[(A) the Secretary shall implement the retrieval plan under section 10 and the decommissioning and post-decommissioning plans under section 13;

[(B) following implementation of such plans, the land withdrawal made by section 3(a) shall terminate and the land shall be managed by the Secretary of the Interior through the Bureau of Land Management; and

[(C)(i) no permit or variance issued with respect to test phase activities or disposal operations pursuant to section 3004 of the Solid Waste Disposal Act (42 U.S.C. 6924), or other applicable hazardous waste laws, with respect to WIPP, shall remain in effect later than 1 year after implementation of the retrieval plan; and

[(ii) all transuranic waste shall be removed from the State unless, prior to the expiration of such 1-year period, a new permit or variance is issued pursuant to section 3004 of the Solid Waste Disposal Act (42 U.S.C. 6924), or other applicable hazardous waste laws.

[(3) EXTENSION OF DEADLINE.—The 10-year period in paragraph (2) may be extended once by the Administrator for not more than 2 years, if the Administrator determines that additional time is necessary for the Administrator to complete the rulemaking under paragraph (1)(B) or for the Administrator's certification to become effective under this subsection.]

\* \* \* \* \*

[(g) ENGINEERED AND NATURAL BARRIERS, ETC.—The Secretary shall use both engineered and natural barriers, and waste form modifications, at WIPP to isolate transuranic waste after disposal to the extent necessary to comply with the final disposal regulations.]

(g) *ENGINEERED AND NATURAL BARRIERS, ETC.—The Secretary shall use both engineered and natural barriers and any other meas-*

ures to the extent necessary at WIPP to comply with final disposal regulations.

**SEC. 9. COMPLIANCE WITH ENVIRONMENTAL LAWS AND REGULATIONS.**

(a) IN GENERAL.—

(1) APPLICABILITY.—Beginning on the date of the enactment of this Act, the Secretary shall comply with respect to WIPP, with—

(A) \* \* \*

\* \* \* \* \*

(H) all regulations promulgated, and all permit requirements, under the laws described in subparagraphs (B) through (G).

*With respect to transuranic mixed waste designated by the Secretary for disposal at WIPP, such waste is exempt from the land disposal restrictions published at part 268 of 40 C.F.R. because compliance with the environmental radiation protection standards published at part 191 of 40 C.F.R. renders compliance with the land disposal restrictions unnecessary to achieve desired environmental protection and a no migration variance is not required for disposal of transuranic mixed waste at WIPP.*

\* \* \* \* \*

[(b) DETERMINATION OF NONCOMPLIANCE DURING TEST PHASE.—

[(1) DETERMINATION BY ADMINISTRATOR.—If the Administrator determines at any time during the test phase that the WIPP facility does not comply with any law, regulation, or permit requirement described in subsection (a)(1), the Administrator shall request a remedial plan from the Secretary describing actions the Secretary will take to comply with such law, regulation, or permit requirement.

[(2) CONSEQUENCES OF NONCOMPLIANCE.—If—

[(A) a remedial plan is not received from the Secretary within 6 months of a determination of noncompliance under paragraph (1); or

[(B) the Administrator determines, by rule pursuant to section 553 of title 5, United States Code, that a remedial plan requested under paragraph (1) is inadequate to bring the WIPP facility into compliance;

then the Secretary shall implement the retrieval plan under section 10 and the decommissioning and post-decommissioning plans under section 13, and, following implementation of such plans, the land withdrawal made by section 3(a) shall terminate and the land shall be managed by the Secretary of the Interior through the Bureau of Land Management.

[(c) DETERMINATION OF NONCOMPLIANCE DURING DISPOSAL PHASE AND DECOMMISSIONING PHASE.—

[(1) DETERMINATION BY THE ADMINISTRATOR.—If the Administrator determines at any time during the disposal phase or decommissioning phase that the WIPP facility does not comply with any law, regulation, or permit requirement described in subsection (a)(1), the Administrator shall request a remedial plan from the Secretary describing actions the Secretary will

take to comply with such law, regulation, or permit requirement.

**[(2) CONSEQUENCES OF NONCOMPLIANCE.—If—**

**[(A) a remedial plan is not received from the Secretary within 6 months of a determination of noncompliance under paragraph (1); or**

**[(B) the Administrator determines, by rule pursuant to section 553 of title 5, United States Code, that a remedial plan requested under paragraph (1) is inadequate to bring the WIPP facility into compliance;**

then the Secretary shall retrieve, to the extent practicable, any transuranic waste and any material contaminated by such waste from underground at WIPP, and implement the decommissioning and post-decommissioning plans under section 13. Following completion of such retrieval and implementation of such plans, the land withdrawal made by section 3(a) shall terminate and the land shall be managed by the Secretary of the Interior through the Bureau of Land Management.】

(d) SAVINGS PROVISION.—The authorities provided to the Administrator and to the State pursuant to this section are in addition to the enforcement authorities available to the State pursuant to State law and to the Administrator, the State, and any other person, pursuant to the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) and the Clean Air Act (40 U.S.C. 7401 et seq.).

**[SEC. 10. RETRIEVABILITY.**

**[(a) REQUIREMENT OF RETRIEVABILITY.—**

**[(1) IN GENERAL.—**Transuranic waste emplaced in WIPP for purposes of the test phase shall be retrievable during the test phase, and for such period of time subsequent to the test phase as may be needed to provide for its retrieval in the event that—

**[(A) the Secretary or the Administrator determines that WIPP does not comply with the final disposal regulations;**

**[(B) the transuranic waste needs to be retrieved for engineering modification or for repackaging for permanent disposal; or**

**[(C) such retrieval is necessary to protect the public health and safety and the environment.**

**[(2) ANNUAL DETERMINATION OF RETRIEVABILITY.—**Beginning 1 year after the initial emplacement of transuranic waste underground at WIPP, and continuing annually throughout the test phase, the Secretary, after consultation with the Administrator, shall publish in the Federal Register the Secretary's determination of whether all such waste emplaced underground at WIPP remains, and will remain, fully retrievable during the test phase.

**[(3) ANNUAL DEMONSTRATION OF RETRIEVABILITY.—**The Secretary shall demonstrate, on an annual basis, in conjunction with the determination required in paragraph (2), that a sample of transuranic waste is retrievable. In making such demonstration, the Secretary shall not take any action to affect the test phase.

**[(4) FAILURE TO MAINTAIN RETRIEVABILITY.—**Upon a determination by the Secretary under paragraph (2) that trans-

uranic waste cannot remain retrievable, and that corrective action is not possible, the Administrator and the State may, pursuant to the authorities provided in the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) or any other applicable hazardous waste law, take action to ensure the retrieval or removal of all transuranic waste in WIPP.

[(b) IMPLEMENTATION OF RETRIEVAL PLAN.—The Secretary shall implement the retrieval plan or take corrective action to ensure the retrievability of transuranic waste in the event that a determination is made under subsection (a)(2) that the waste is not or will not otherwise remain retrievable.

[(c) CONFLICT RESOLUTION.—The State may invoke the conflict resolution provisions of the Agreement if it determines that there is an insufficient basis for the Secretary's annual determination of retrievability or that the demonstration of retrievability does not ensure that transuranic waste will be retrievable.]

#### SEC. 10. TRANSURANIC WASTE.

*It is the intent of Congress that a decision will be made by the Secretary with respect to the disposal of transuranic waste no later than November 30, 1997.*

\* \* \* \* \*

#### SEC. 13. DECOMMISSIONING OF WIPP.

[(a) PLAN FOR WIPP DECOMMISSIONING.—Within 5 years after the date of the enactment of this Act, the Secretary shall submit to the Congress, the State, the Secretary of the Interior, and the Administrator, a plan for the decommissioning of WIPP. In addition to activities required under the Agreement, the plan shall conform to the disposal regulations that apply to WIPP at the time the plan is prepared. The Secretary shall consult with the Secretary of the Interior and the State in the preparation of such plan.

[(b) MANAGEMENT PLAN FOR THE WITHDRAWAL AFTER DECOMMISSIONING.—Within 5 years after the date of the enactment of this Act, the] *The Secretary shall develop a plan for the management and use of the Withdrawal following the decommissioning of WIPP or the termination of the land withdrawal. The Secretary shall consult with the Secretary of the Interior and the State in the preparation of such plan and shall submit such plan to the Congress.*

#### SEC. 14. SAVINGS PROVISIONS.

(a) CAA AND SWDA.—[No provision] *Except for the exemption from the land disposal restrictions described in section 9(a)(1), no provision of this Act may be construed to supersede or modify the provisions of the Clean Air Act (42 U.S.C. 7401 et seq.) or the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).*

(b) EXISTING AUTHORITY OF EPA AND STATE.—No provision of this Act may be construed to limit, or in any manner affect, the Administrator's or the State's authority to enforce, or the Secretary's obligation to comply with—

(1) the Clean Air Act (42 U.S.C. 7401 et seq.);

(2) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), [including all terms and conditions of the No-Migration Determination] *except that the transuranic mixed waste designated*

*by the Secretary for disposal at WIPP is exempt from the land disposal restrictions described in section 9(a)(1); or*

(3) any other applicable clean air or hazardous waste law.

**SEC. 15. ECONOMIC ASSISTANCE AND MISCELLANEOUS PAYMENTS.**

(a) 15-YEAR AUTHORIZATION.—There are authorized to be appropriated [to the Secretary for payments to the State \$20,000,000 for each of the 15 fiscal years beginning with the fiscal year in which the transport of transuranic waste to WIPP is initiated] *to the State \$20,000,000 for each of the 15 fiscal years beginning with the date of the enactment of the Waste Isolation Pilot Plant Land Withdrawal Amendment Act. An appropriation to the State shall be in addition to any appropriation for WIPP.*

\* \* \* \* \*

